



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

Senator Inn - Embassy Room

19 Union Street ~ Augusta, Maine

October 22, 2018

Commission Chair Arnold Clark called the meeting to order at 8:30 AM. Present were Commissioners Arnold Clark, Deborah Whitworth, John Norman, Ted Helberg, and Fred Oettinger.

AGENDA

Commissioner Whitworth moved, seconded by Commissioner Helberg, to adopt the Agenda and to accept the Investigator's recommended decision in each of the cases listed on the Consent Agenda (see listing on page 4). 5 in favor | 0 opposed.

MINUTES

Commissioner Helberg moved, seconded by Commissioner Whitworth, to adopt the August 27, 2018 Commission meeting minutes. 5 in favor | 0 opposed.

ADMINISTRATION

Quarterly: Executive Director Sneirson discussed FY2018's second quarter agency performance:

- Training & Education: Commission staff attended/presented at 6 trainings/presentations.
- Financial Report: Presented and placed on file.
- Pending inventory: At the end of the quarter on 9/30, the Commission had 673 cases pending, with the average age of cases in the agency at 250 days; cases are with investigators for an average of 180 days.

Monthly reports: Executive Director Sneirson discussed reporting on Commission activities from December:

- Personnel: The first of the two Investigator position vacancies was filled by Jane O'Reilly, who interned with the Commission during law school, in September. The second Investigator vacancy has been filled by Katherine Hutchinson, who will join the Commission in December. The Commission also has another great law school intern, Alex Brindley.
- Compliance: Since the last meeting, there were three unsuccessful conciliations and two successful conciliation. Four reasonable-grounds cases remain in active conciliation.

Commissioner Oettinger moved, seconded by Commissioner Helberg, to approve Conciliation Agreements in the following cases:

- H/PA18-0049: Kim Norwood v. Bangor Housing Authority
- H18-0028 A/B: Shane Robertson v. Robb Allen Crawford and Carol Starbird Crawford
- E16-0181: Helen Crabtree v. Central Maine Medical Center & Maine College of Health Professionals.

5 in favor | 0 opposed.

- New Charges: 51 new charges filed in August; 51 new charges filed in September.
- Administrative Dismissals: 22 administrative dismissals in August; 15 administrative dismissals in September.
- There were 16 predetermination settlements in August with benefits of \$185,000 to complainants and 36 in September with benefits of \$233,500 to complainants.

NEW BUSINESS

- Two reasonable-grounds cases in which conciliation agreements were reached are ready for dismissal, as the agreements' terms have been fully implemented, so Commissioner Helberg moved, seconded by Commissioner Norman, to dismiss Sweeney v. NNE Conference of Conference of Seventh-day Adventists (H17-0059) and Young v. American Income Life (E15-0568). 5 in favor | 0 opposed.
- The Commission's proposed amendments to its Procedural Rule were published as required, with a public comment period that ended 9/21/2018; the Commission received one comment. That comment, from a Bangor attorney, suggested that the Procedural Rule as drafted be slightly amended so as to allow greater flexibility for persons who require reasonable accommodations at a Commission meeting to request them. The Procedural Rule draft was amended in that respect. With that, the Proposed Rule amendments are ready for Commission adoption. Commissioner Helberg moved, seconded by Commissioner Oettinger, to adopt the proposed amendments to the Commission's Procedural Rule. 5 in favor | 0 opposed.
- Commissioner Norman was re-appointed by the Office of the Governor for another five-year term with the Commission, and on September 5 the reappointment was unanimously approved by the Joint Standing Committee on Judiciary; later that day, however, the Governor rescinded Commissioner Norman's appointment along with all other board appointments pending. Commissioner Norman will hold over and continue to serve as Commissioner until the appointment and confirmation process can be completed at a later date.
- Amy Sneirson and Barbara Archer Hirsch attended the Maine Bar Association Labor annual Employment Group luncheon, which was excellent.
- The Commission be performing outreach with the EEOC on October 31; in the morning outreach will occur at an event held by the Bangor Chamber of Commerce and in the afternoon outreach will occur at an event held by the Maine Employment Lawyers Association in Augusta.
- The Commission will be attending a HUD Conference in Washington in November.
- The Commission will attend a regional EEOC conference in Connecticut later today.
- The Executive Director presented the 2018 Annual Report to Commissioners. The report will be submitted to the Legislature and published electronically later this week.

Litigation will be addressed after Executive Session.

The Commission took a four-minute break at 8:41 AM.

At 8:45 AM Commission Chair Arnold Clark began the case hearing agenda.

CASES VOTED ON

PA16-0538-A: Nicholas A. Gladu (Warren) v. Maine Correctional Center (Windham): Complainant was not present. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds

to believe Maine Correctional Center discriminated against Nicholas A. Gladu on the basis of disability or retaliated against him in violation of the MHRA. 5 in favor | 0 opposed.

E17-0002*: Madeline Auclair (Saco) v. Coasters (Biddeford). Respondent was not present. Commissioner Oettinger moved, seconded by Commissioner Norman, to find no reasonable grounds to believe that Coasters discriminated against Madeline Auclair due to her disability and to find that there are **reasonable grounds** to believe that Coasters retaliated against Madeline Auclair due to protected activity. 5 in favor | 0 opposed.

E17-0009: Judy Gopaul (Lisbon) v. State of Maine/Dept. of Health & Human Services/Center for Disease Control (Augusta). Complainant was not present. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable Grounds to believe that Respondents discriminated against Complainant Judy Gopaul based on national origin/colorhace, and no reasonable grounds to believe that respondents retaliated against Complainant Judy Gopaul for engaging in protected activity. 5 in favor | 0 opposed.

PA17-0158*: Jimmy Ford (Portland) v. Spare Time Yankee Lanes (Portland). Amy Kitchen, Respondent's Assistant Manager, restated the position of the Respondent. Complainant was not present. Investigator Hensley restated the facts of the case. Commissioner Oettinger moved, seconded by Commissioner Norman, to find reasonable grounds to believe that Spare Time Yankee Lanes discriminated against Jimmy Ford because of rac. 2 in favor | 3 opposed (Clark, Whitworth, Helberg opposed); the motion did not pass. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Spare Time Yankee Lanes discriminated against Jimmy Ford because of race. 3 in favor | 2 opposed (Norman, Oettinger opposed).

E17-0211: Richard Mace (Portland) v. Subway (Biddeford) Complainant was not present. Commissioner Helberg, moved, seconded by Commissioner Oettinger, to find no reasonable grounds to believe that Respondent Subway discriminated against Complainant Richard Mace because of his disability (reasonable accommodation, discharge). 5 in favor | 0 opposed.

E17-0245: Donna M. White (Washburn) v. University of Maine System/University of Maine Presque Isle (Presque Isle). Complainant was not present. Commissioner Norman moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that University of Maine System./University of Maine Presque Isle discriminated against Donna M. White based on her sex or retaliated against her for engaging in protected activity. 5 in favor | 0 opposed.

H18-0155*: Leslie McClellan (Old Orchard Beach) v. Mark Gervais (Old Orchard Beach). Attorney Neil Weinstein restated the position of the Respondent. Attorney Patricia Ender restated the position of the Complainant. Chief Investigator Alice Neal restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find **reasonable grounds** to believe that Mark Gervais discriminated against Leslie McClellan on the basis of disability in the terms and conditions of her housing by denying her reasonable accommodations and **reasonable grounds** to believe that Mark Gervais retaliated against Leslie McClellan for asserting her rights under the Maine Human Rights Act. 4 in favor | 1 opposed. (Clark opposed).

E17-0016*: Kevin Osgood (Rockland) v. Advantage Solutions (Anaheim, CA): Attorney David Strock restated the position of the Respondent, Attorney Don Lawson-Stopps restated the position of the Complainant. Investigator Joseph Hensley restated the facts of the case. Commissioner Norman moved, seconded by Commissioner Oettinger, to find **reasonable grounds** to believe that Advantage Solutions retaliated against Kevin Osgood because of WPA-protected activity, 4 in favor | 1 opposed (Helberg opposed).

H18-0241: Harley Jones (Portland) v. Stacey Campbell (Portland). Attorney Regan Sweeney restated the position of the Complainant. Attorney David Chamberlain restated the position of the Respondent. Chief Investigator Alice Neal restated the facts of the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Stacey Campbell discriminated against Harley Jones based on his sex (disparate impact, making housing unavailable) and no reasonable grounds to believe that Stacey Campbell discriminated against Harley Jones based on his sex (disparate impact, making housing unavailable). 4 in favor | 1 opposed (Norman opposed).

At 11:25 AM Chair Clark called for a 5 minute recess.

EXECUTIVE SESSION

At 11:30 AM, Commissioner Norman moved, seconded by Commissioner Oettinger, to go into executive session to discuss pending or contemplated litigation and the Commission's legal rights and duties with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 5 in favor | 0 opposed.

At approximately 12:30 PM, Commissioner Whitworth moved, seconded by Commissioner Norman, to come out of executive session. 5 in favor | 0 opposed.

Commissioner Oettinger moved, seconded by Commissioner Norman to do the following:

(a) To not litigate the following reasonable-grounds cases in which conciliation was not successful:

- Seekins v. Acadia Hospital (PA17-0014)
- Cray v. Central Aroostook Association (E16-0268)
- Hawkins v. O'Reilly Auto Parts (E16-0457A/B)
- O'Leary v. Maine Department of Public Safety (E16-0204)
- Ainsworth v. Corning (E17-0473)

AND

(b) to litigate the reasonable-grounds case Frodyma v. 135 Portland St., LLC, and Michael Desjardins (H18-0064 A/B).

5 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Norman, to recommend the MHR Investigator position be submitted for reclassification, and that the minimum qualifications for the position be modified to require a Juris Doctor degree along with six years of relevant experience or education, for the purpose of recruitment and retention. 5 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Helberg, to (a) immediately provide a special merit increase for Amy Sneirson, Executive Director, to Step 12 of the currently applicable salary grade, (b)

request that the Executive Director position be reclassified to ensure both external market competitiveness and internal State equity, and (c) modify the MHRC Executive Director position’s minimum qualifications to require possession of Juris Doctor degree, admission to practice before the Maine bar, and current licensure to practice law in good standing. 5 in favor | 0 opposed.

At approximately 12:39 PM, Commissioner Clark adjourned the meeting.

CONSENT AGENDA

The consent agenda is a listing of cases scheduled on the Commission’s meeting agenda in which there was no written disagreement to the Investigator’s recommendation. Commissioners considered these cases without oral argument by the parties.

E16-0435AB:	Carol A. Pinney (Dover-Foxcroft) v. Correct Care Solutions, LLC (Nashville, TN) & State of Maine	NRG
PA16-0450:*	Brandon Gross (Warren) v. SOM/MDOC/Maine Correctional Center (Augusta)	RG
E17-0027:	Kevin Osgood (Rockland) v. Shaw’s Supermarkets (Rockland)	NRG
E17-0047:	Peter G. Marshall (Sidney) v. Eastern Maine Medical Center (Bangor)	NRG
E17-0075:	Jennifer A. Stainbrook (Union Center, SD) v. Stericycle Communications Solutions (Winthrop)	NRG
E17-0146:	Andrew L. Pratt (Machias) v. Down East Community Hospital (Machias)	NRG
PA17-0149:	Louise Martin (Pittsfield) v. Waterville Elks Club (Waterville)	NRG
E17-0151:	Shaun C. White (Bangor) v. Wal-Mart (Bangor)	NRG
E17-0171AB:	George Stanley (Greene) v. Denny’s (Augusta), Employee Leasing Co., LLC (Augusta)	NRG
E17-0184:	Barbara Colleen Spears (Saco) v. Aetna (Hartford, CT)	NRG
E17-0198:	Jeffrey S. Thompson (Waterville) v. Team Prior LLC (Thomaston)	NRG
E17-0209A:	Heidi L. Brewer (Little Deer Isle) v. Billings Diesel & Marine, Inc. (Stonington)	NRG
E17-0210ABC:*	Cynthia L. Moody (Harpwell) v. The Brothers of Christian Instruction (Alfred), Commissioner Joseph Fitzpatrick/Maine Department of Corrections (Augusta), & James W. Boddi (Alfred)	RG/NRG
E17-0255:	Philip Anderson (Poland) v. Ross Express, Inc. (Penacook, NH)	NRG
E17-0262:	Brandon Pelletier (Lewiston) v. Bath Iron Works Corporation/General Dynamics (Bath)	NRG
E17-0327:	Jason Hall (Old Town) v. Lowe’s Home Centers, LLC (Bangor)	NRG
E17-0339:	Eva Hanson (Plymouth) v. Family Dollar (Pittsfield)	NRG
E17-0456:	Martha Powers (Old Town) v. Penquis Cap (Bangor)	NRG
E17-0476:*	Sharron Denbow (Bangor) v. Shade Doctor of Maine, LLC (Brewer)	RG
H18-0174 AB:	Mercy Edwin (Auburn) v. Auburn Mall Apartments (Auburn) & John Plummer (Auburn)	NRG
H18-0175:	Christine S. Ritchie (Yarmouth) v. Taymil Partners (Yarmouth)	NRG
H18-0198A-E:	Susan M. Clark (South Portland) v. John Gerken (South Portland), Lisa Viola (South Portland), Michael Hulsey (South Portland), Karen Dempsey (South Portland), South Portland Housing Authority (South Portland), Dale (South Portland), Dean (South Portland), and Jacob (South Portland)	NRG
H18-0207AB:	Emma Weekly-Fletes (Oxford, ME) v. Churchill Group, Inc. (Carbondale, CO) & Crystal Bean (Oxford, ME)	NRG
H18-0218ABC:	Kristin Wounded (Ellsworth) & Harry Wounded (Bangor) v. Community Housing of Maine, Inc.	NRG
H18-0219ABC:	(Portland), Sarah Gaba (Portland), & Elizabeth Baranick (Portland)	NRG
H18-0230AB:	Rayon Wilson (Brunswick) v. Yue C. Chan (Freeport), Shui W JT (Freeport), & Katherine McClellan (Freeport)	NRG

TABLED

E17-0004:	Holly B. Stover (Boothbay) v. State of Maine, Dept. of Health and Human Services (Augusta)
E17-0092:	Karen Houghton (Center Ossipee, NH) v. Maine Behavioral Healthcare (Portland)